unreasonable by any standard, because once AT&T has a functioning
OS/DA center it will want all customers served by a given local
switch to be routed to that platform. Moreover, if NYT imposed a
customer-by-customer requirement in May, AT&T would need to
change its service order processing systems -- a process that
would take at least three months. In such circumstances, AT&T
would be unable to order customized routing and rebranding (or
perhaps even to submit any resale service orders) until at least
August. Hou, pp. 43-45; Tr. 603 (Halloran).[37] Until NYT makes
its ordering requirements clear, there is no assurance that NYT
will discharge its obligations on June 1.

CHECKLIST ITEM VIII: **WHITE PAGES LISTINGS**

Although white pages listings are available from NYT,
it is unclear whether they are available on nondiscriminatory
terms. In particular, MFS testified that some of its customers
could not be listed in NYT's white pages. Tr. 767 (Ball).
Although NYT concedes that there had been a problem with MFS's
white pages listings, it contends that the problem is now fixed.
Tr. 768 (Garzillo). NYT has provided no evidence, however, to
support this contention.

MFS also testified that NYT provided it with proofs of
the white pages for MFS's review only ten business days before

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[37]Even if AT&T's order met NYT's requirements, NYT would
then take more than 30 business days to implement the service.
Tr. 589-590 (Garzillo).

the white pages were to be sent to the printers. Tr. 766 (Ball).

Consequently, MFS was forced either to hire temporary workers to

review thousands of listings for accuracy, or to risk having

inaccurate customers listings. Tr. 766-67 (Ball). NYT has

provided no data regarding how much time it has to review the

accuracy of its own white pages listings. Without such

information, it cannot demonstrate that its practices on white

pages review are nondiscriminatory.[38]

CHECKLIST ITEM IX: <u>NUMBER ADMINISTRATION</u>

NYT cannot demonstrate that it is administering numbers

in a nondiscriminatory manner because it does not have any data

comparing NXX problems experienced by the CLECs with similar

problems experienced by NYT. Tr. 775 (Garzillo). In addition,

Teleport has found it necessary to complain to the FCC regarding

problems with NYT's number administration (Teleport Exhibit at

Tab 4), and MCI has reported to the Commission that NYT was

refusing to assign it NXX codes in the 718 area code. Marzullo,

¶ 43.

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[38]In addition, NYT has not committed to a process whereby
CLECs, like NYT, would be able to view camera ready versions of
complex directory listings prior to directory publishing.
Nelson, ¶ 13.

CHECKLIST ITEM X: <u>SIGNALING AND CALL-RELATED DATABASES</u>

NYT does not provide full access to unbundled signaling because: (1) it has no procedures in place to establish the ability to pass all types of signaling messages, including TCAP messages; and (2) it has no procedures in place to permit CLECs to take advantage of NYT's AIN capabilities.

a.   **NYT Has No Procedures In Place To Assure CLECs Will Be Able To Exchange TCAP Messages.**

NYT has no established, predictable procedures in place that enable CLECs to establish <u>full</u> interconnection to NYT's signaling network, including the ability to pass Transaction Capabilities Application Part ("TCAP") messages. As detailed in Ms. Halloran's statement, AT&T asked NYT for the ability to pass TCAP messages necessary to offer certain advanced features well over a year ago, in December 1995. NYT's "procedures" for establishing this capability were entirely ad hoc, and after a lengthly series of failed attempts, AT&T was finally able to pass TCAP messages between AT&T's switch and a single NYT switch in February 1997 -- fourteen months later. Halloran, pp. 36-38. NYT has never set forth the procedures for establishing TCAP interconnection with all NYT switches (which is necessary for a CLEC to provide TCAP-based services), and the SGAT contains no such procedures. As a result CLECs cannot plan effectively to implement TCAP-based services.

b. **NYT Has Not Made AIN Services or Features Available as Required by the FCC and This Commission.**

The First Report and Order requires NYT to provide CLECs with access to three different forms of AIN capabilities -- access to NYT's Service Creation Environment to permit CLECs to develop their own AIN services; access to AIN services that NYT makes available to its own customers; and access by a CLEC with its own switch to NYT's signaling system to use NYT's AIN services. First Report and Order, ¶¶ 486-87, 496. None of these services is currently available from NYT, which acknowledged that "[t]he process of creating AIN interaction between ourselves and anyone else whether it's an IXC or a CLEC is a complex one, and it's very difficult to talk about how we'll do it." Tr. 546 (Gansert).

Nor has NYT established written procedures or benchmarks for CLECs to order AIN services on a nondiscriminatory basis. The only provision on AIN in the SGAT appears at § 5.7.6, which states that NYT "will provide [telecommunications carriers] with a process to create and test AIN-based services on [NYT's AIN Service Creation Platform]." SGAT, § 5.7.6(A). This one-page reference sets forth only the broadest parameters; it does not establish procedures by which a CLEC could obtain information regarding the AIN services NYT has available or determine when it could use NYT's Service Creation Environment to develop new AIN services. NYT justifies this approach by stating that "AIN Service Creation is unique to each [Telecommunications Carrier].

As such, development of the service logic is customer specific."
SGAT § 5.7.6(B)(1). See also Tr. 545, 565 (Gansert) ("each AIN
application is unique"). At the conference, NYT representatives
defended the position as follows:

> "What we are offering is in the terms and conditions to
> say that any AIN capability which is resident in our
> network, we will allow access to and we will allow
> utilization of it by a CLEC.
>   The process of how that will happen is extremely
> complicated and frankly we don't know completely and we
> need to work with them on individual cases to develop
> that, and I think that's true anywhere in the
> industry." Tr. 546 (Gansert).

The lack of written procedures for obtaining AIN
services gives NYT unfettered discretion and permits NYT
effectively to control a CLEC's ability to offer new AIN
services. AT&T testified that such services are likely to be a
significant means by which CLECs seek to differentiate themselves
in the marketplace and introduce their services. Tr. 538
(Halloran). NYT's failure even to establish written procedures
violates its obligation to provide nondiscriminatory access to
its signaling databases. The record shows that NYT is only now
beginning to work on various procedures that must be in place
before it can claim that AIN services are available to CLECs on a
nondiscriminatory basis:

- o Procedures governing the development of AIN services
     are in "active development" but have yet to be
     published or made available to CLECs. Tr. 566
     (Gansert).

- o NYT is still working on the development of
     certification and testing procedures that this

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Commission ordered in the AT&T arbitration award. Tr. 543, 550 (Garzillo).

o   NYT estimates that development of an AIN service by a CLEC could take six months or more depending on the nature of the service. Tr. 547 (Gansert).

Notwithstanding NYT's claims about the "unique" status of AIN, there are several types of AIN services. Although some will be custom designed, many are standard services and features that will not involve customization. For example, there cannot be anything "customized" or specialized about access to AIN services that NYT makes available to its own customers that justifies a customized process for CLECs ordering the same AIN functions from NYT. AT&T requested information about existing AIN features and functions from NYT in December 1996, but AT&T did not receive a response to its request until February, and even then the response was incomplete and did not provide the necessary information. Thus, AT&T still cannot make a market determination about AIN services, because it does not know what AIN services are available from NYT at which switches. Tr. 539, 551 (Halloran).

Furthermore, written procedures and benchmarks are necessary so that NYT does not have unlimited discretion in controlling the development of new AIN services. Halloran, pp. 43-45. Such specific procedures and benchmarks are needed to determine whether NYT has acted reasonably. NYT cannot avoid establishing necessary standards simply by claiming that AIN is a

"flexible" technology. Moreover, the development of written procedures and processes governing the development of AIN services will not restrict, but rather enhance, the development of new technologies and services. In addition, it will ensure that NYT does not have the opportunity to delay CLECs' introduction of new technologies and services for end users by simply failing to act.

The FCC has required ILECs to provide "interface design specifications" for OSS functions, Second Order on Reconsideration at 5, and AIN services are included within the definition of network elements for which NYT must provide nondiscriminatory access. First Report and Order, ¶ 486-87. Accordingly, NYT must provide, at the very least, written procedures governing ordering and access to AIN services.

CHECKLIST ITEM XI: NUMBER PORTABILITY

Interim number portability is not commercially available to AT&T because (1) NYT refuses to permit interconnection for route indexing at the tandem switch; and (2) NYT also refuses to port individual numbers within a DID block.

a.   NYT Refuses To Allow Interconnection At The Tandem For The Route Indexing Option.

NYT's offer of the route indexing option for interim number portability is limited to direct end-office interconnection. See, e.g., Garzillo, ¶ 82; Butler, ¶ 104. This

limitation is commercially unreasonable and effectively renders route indexing unavailable.

AT&T is preparing to enter the local market with an offering called AT&T Digital Link. AT&T will use route indexing to provide number portability for this service, which NYT acknowledges is appropriate. Tr. 735-36 (Garzillo). NYT's refusal to permit AT&T to interconnect at a tandem switch for route indexing, however, is extremely inefficient and will require AT&T and NYT to build many additional and unnecessary trunks to connect directly with NYT end offices. Halloran, pp. 34-35.

Other CLECs have echoed AT&T's concerns. See Tr. 738 (Rota-Keller) ("We are interested in route indexes by portability hub because portability hub would give us the ability to build just one set of trunking . . . without having to build these trunks directly from each NYNEX end-office to our switch"). Even NYT conceded that interconnection at the tandem is technically feasible. Tr. 736 (Garzillo) ("I'm not going to argue that. It has technical viability"). Indeed, NYT's witnesses have conceded that such an arrangement would be more efficient. Gansert, ¶ 19. NYT's continuing refusal is commercially unreasonable and makes the route indexing option effectively unavailable.

b. NYT Unreasonably Refuses To Port Numbers Within A Direct Inward Dialing Block.

NYT also unreasonably refuses to port individual numbers within a Direct Inward Dialing ("DID") block. Whenever a customer has obtained telephone numbers as part of a DID block -- which is typically a block of 20 to 100 numbers -- NYT insists that individual numbers within that block cannot be ported, and that only the entire block can be ported. This is not a requirement of the SGAT or any formal agreement. However although AT&T asked NYT to port a specific number on December 17, 1996, NYT has still not ported that number because it is part of a DID block.

NYT's refusal has a significant dampening effect on customers' willingness to try AT&T's Digital Link offering. Halloran, p. 32. Moreover, NYT has never offered any technical reason why individual numbers within a DID block cannot be ported. Id., p. 30; see also Tr. 755-56 (Garzillo) (this issue has "been one of our process problems we're trying to figure out").

CHECKLIST ITEM XII: LOCAL DIALING PARITY

Item (xii) of the statutory checklist requires NYT to provide nondiscriminatory access "to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)." Section 271(c)(2)(B)(xii). The "dialing

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parity" provision of the SGAT, however, is plainly insufficient to satisfy the requirements of Section 252(f). The SGAT simply states that NYT "shall provide Local Dialing Parity as required under Section 251(b)(3) of the Act," and makes cross-references to provisions of the SGAT regarding telephone number provision, OS/DA, and directory listings. SGAT, § 8.0. The SGAT does not show, and NYT has presented no evidence to support a finding, that it provides dialing parity on a commercially reasonable basis or that such services are available to CLECs on just, reasonable, and nondiscriminatory terms.

Indeed, the record shows that NYT does not provide dialing parity. When an NYT retail customer uses NYT-branded operator services and wishes to receive information about NYT's rates for its services, the customer needs only to dial "0." However, CLEC customers using rebranded operator services from NYT cannot obtain information about CLEC rates by dialing "0," and will not be able to do so until at least early 1998. Until that time, both dialing parity and nondiscriminatory access to operator services will not be commercially available to CLECs. Hou, p. 45; Nelson, ¶¶ 16-18; Tr. 600-601 (Nelson).

In addition, NYT's plan to implement a 646 area code for Manhattan would deny dialing parity. Unless there is mandatory 10-digit dialing for all local calls in the existing 212 area, CLECs will be assigned 646 numbers, and their customers will need to dial 10 digits for local calls to 212 numbers, while NYT's customers will need to dial only 7 digits. This disparity

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would be totally inconsistent with the statutory requirements.
Marzullo, ¶ 44.

CHECKLIST ITEM XIV: RESALE

NYT has not complied with Item (xiv) of the checklist,
which requires that telecommunications services be "available for
resale in accordance with the requirements of sections 251(c)(4)
and 252(d)(3)." Although resold services are currently available
from NYT, the terms and conditions that NYT imposes on resale are
unjust and discriminatory in three principal respects:

o   First, NYT does not provide resellers with
      nondiscriminatory and commercially reasonable access to
      the operations support systems that CLECs need to
      resell NYT services.

o   Second, NYT has refused to allow resellers to place
      orders on a "Migration As Specified" basis, even though
      most other RBOCs, including Bell Atlantic, permit such
      a practice.

o   Third, NYT has declined to permit CLECs to submit
      changes to customer orders until they have been
      completed in NYT's systems, even though NYT service
      representatives can make changes to orders while they
      are still pending in NYT's systems.

**a.   NYT Does Not Provide Resellers With Nondiscriminatory
        And Commercially Reasonable Access To Its OSSs.**

As in the case of UNEs, NYT indisputably does not
provide resellers with nondiscriminatory and commercially
reasonable access to its OSSs. First, the SGAT provisions
relating to OSS access for resellers are patently inadequate to
satisfy the requirements of Section 252(f). The only provision
of the SGAT referencing OSSs in the context of resale is Section

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6.7.16, which states that NYT "will establish appropriate interfaces with Resellers for purposes including but not limited to the placement of service orders by Resellers and the delivery of trouble reports to [NYT]." Like Section 5.9 (discussed above), this provision does not identify the interfaces that NYT "will establish"; indeed, it does not even specify the OSS functionalities that will be available. And, as in the case of Section 5.9, NYT has not produced -- and cannot produce -- any evidence that the interfaces that it "will establish" provide nondiscriminatory access to OSSs to resellers now. Quite simply, the record shows that NYT does not provide such access.

In its Section 271 application, NYT made bald and unqualified assertions that it was providing CLECs with "access" to its OSSs. NYT asserted that it provided such access through three interfaces, and that CLECs using the OSSs would receive "comparable" response times. Garzillo, ¶ 51; Miller, ¶¶ 6-8, 37. Yet NYT did not provide any data or other evidence to support these contentions. Nor did NYT even assert that its OSSs had the capacity to process all CLEC orders. Miller, ¶ 29-31. Nonetheless, in its introductory remarks on OSS at the technical conference, NYT continued to paint a rosy description of the OSS access that it "offers" to CLECs. Tr. 377-385 (Miller).

Only under cross-examination and in its responses to the Staff's interrogatories -- and in the face of overwhelming evidence submitted by the CLECs -- did NYT finally acknowledge critical facts about such matters as response times, capacity,

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and the commercial adequacy of its interfaces. These facts show, beyond doubt, that in numerous respects NYT does not provide nondiscriminatory access to its OSSs in a commercially reasonable manner.

1. **NYT Does Not Provide CLECs With Parity Access To Its OSSs.**

NYT does not provide CLECs with access to its OSSs that is at parity with its own retail operations in at least three critical areas: (1) automated response times; (2) the degree of human intervention; and (3) system reliability.

A. **The Response Times Of NYT's OSSs For Resellers Are Plainly Discriminatory And Unreasonable.**

The evidence demonstrates -- and NYT admits -- that its OSSs do not provide CLECs with remotely the same response times as NYT's retail representatives for pre-ordering, ordering, and repair transactions.[39] In fact, the average response times for CLECs are over <u>15</u> <u>times</u> as long as the response times for NYT retail representatives. .This enormous difference does not simply deny CLECs parity access; it significantly impairs resellers' ability to compete in the local exchange market.

CLECs demonstrated that the average time for a NYT response to a reseller is between 1 and 2 minutes. One reseller,

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[39]In the context of these transactions, "response time" is measured from the time a reseller's message enters NYT's DCAS gateway until the gateway transmits the response back to the reseller. It does not include the time required for the reseller to pre-process, post-process or transmit the message. Kennedy, p. 9.

Community Telephone, calculated that the average response time is 100 seconds using the Electronic Interface Format ("EIF"). Kennedy, p. 9; Tr. 395-97 (Kennedy).[40] MCI and LCI similarly determined that the response times for the EIF and Web Graphical User ("Web/GUI") interfaces are between one and two minutes. Spivy, ¶¶ 50, 72; Wajsgras, ¶ 16-17; Tr. 414-415, 423 (Spivy). NYT itself has previously acknowledged that the response time on its OSSs for resellers averages between 1 and 2 minutes for all wholesale customers, whether the reseller is using the EIF interface or the Web/GUI. Kennedy, p. 10.[41]

In stark contrast, NYT's witnesses acknowledged (but only on cross-examination) that the average response time of NYT's systems to a data request by NYT's retail representatives for these transactions is only 2 to 10 seconds. Tr. 447, 495-496 (Miller). See also Kennedy, p. 9 (average response time for NYT's retail representatives is 6 seconds); Spivy, ¶¶ 40, 55.

Critically, NYT did not even attempt to deny the gross disparity in response time. In fact, NYT acknowledged that the response time for CLECs "can be improved" and "is not as we would like it to be." Tr. 454-55 (Miller). Moreover, NYT stated that

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[40]This average applies to a wide range of transactions, including the submission of repair trouble tickets, performance of address verifications, retrieval of customer service records ("CSRs"), determination of the availability of due dates (i.e., the dates of installation or repair), and assignment of telephone numbers. Kennedy, p. 10.

[41]As discussed below, no CLEC is currently using the third interface (EDI) "offered" by NYT because, as shown below, it is simply not commercially ready.

the disparity was a conscious "trade-off" it made because of its

belief that its interfaces would at least enable resellers to

"get into the market." Tr. 453-54 (Miller). That paternalistic

explanation, however, cannot disguise the fact that NYT has not

complied with its express duty, both under the Act and the FCC's

orders, to provide resellers with nondiscriminatory (i.e.,

parity) access to its OSSs.

The impact of the disparity in response times is

further magnified by the fact that a reseller experiences the 1-

to-2 minute response time virtually every time it is contacted by

a customer, and for virtually every inquiry that the reseller

must make during the pre-ordering process. Kennedy, pp. 9-10;

Tr. 417 (Spivy). Moreover, a reseller typically must go through

several (up to three to five) preordering steps for a single

order, causing several minutes of delays in placing a single

order for a customer -- all while the customer is on the line.

Tr. 417 (Spivy).

As expected, all of this has substantial effects on

consumers and competition. Resellers cannot effectively compete

if they must wait between 1 and 2 minutes before they can give a

customer the information they need. Kennedy, pp. 10-12; Spivy, ¶

64; Tr. 397-98 (Kennedy); Tr. 415 (Spivy). In such

circumstances, customers legitimately question the reseller's

competence, and may even decline to use the reseller's services,

since the customer can obtain almost instantaneous responses from

a NYT retail representative. Kennedy, pp. 10-12; Spivy, ¶¶ 60-64.

B.   Human Intervention In the Processing of Resellers' Service Orders Denies Resellers Parity Access To NYT's OSSs.

Resellers are also denied parity access to NYT's OSSs because, unlike NYT retail orders, resellers' orders are subject to human (manual) intervention by NYT wholesale representatives. After a CLEC representative submits a service order into the NYT system, and NYT receives the service order through the DCAS gateway, the order is assigned to a NYT wholesale representative. The order must then wait in queue with other outstanding orders before it is manually re-entered by the representative on NYT's system. On the average, this waiting period is between 2 and 24 hours.[42]

By contrast, no human intervention is required in processing orders for NYT retail customers. When a customer calls NYT for service, the customer service representative submits the order into the NYT system almost immediately, and there is no subsequent manual intervention. Kennedy, p. 12;

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[42]Kennedy, p. 12; Spivy, ¶ 12-13, 36, 68-69; Nelson, ¶ 7; Wajsgras, ¶ 14, 17; Tr. 386 (Miller), 389 (Dailey), 406-07 (Hou), 412-13 (Spivy), 435 (Nelson), 447-48 (Miller). In fact, due to human intervention the waiting period can be up to 24 hours even for receipt of notification that an order has been rejected. In its recently-filed responses to on-the-record requests, NYT stated that if a CLEC order is rejected "due to failure upon SOP [Service Order Processor] edit, the response would be provided within 24 hours." See NYT Responses to On-the-Record Requests, Transcript Request p. 492 (Butler); Spivy, ¶ 69.

Nelson, ¶ 7; Wajsgras, ¶ 14; Tr. 406-07 (Hou); Tr. 447-48 (Miller).[43]

This disparity in processing of resellers' orders is unreasonable, discriminatory, and anti-competitive.[44] As a result of the 2-to-24 hour delay caused by human intervention, the record also shows that it is more difficult for resellers' customers to reserve a due date for installation or repair than for NYT retail customers who place service orders at the same time. Often resellers' customers have their service installed or repaired later than NYT customers. Kennedy, pp. 11-15; Wajsgras, ¶ 17; Tr. 389 (Dailey). These problems can lead to significant customer dissatisfaction. Kennedy, pp. 15-16.

Furthermore, the manual processing of resellers' orders by NYT personnel can -- and does -- lead to errors in entry.

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[43]NYT's assertion that orders for its retail customers require human intervention (NYT's Response to Staff-NYT-1.6) is totally frivolous and seriously misleading. In essence, NYT states that human intervention is required for its own orders because a retail customer is unable to enter its order directly into the NYT system, and therefore the NYT customer representative must perform this task. Tr. 499-500 (Butler). This ludicrous rationalization demonstrates the lengths to which NYT has been willing to go to obfuscate and distort the truth about its OSSs. Contrary to NYT's suggestion, the parity access demanded by the 1996 Act is not parity as between NYT's end-user customer and the reseller's representative using NYT's OSSs; it is parity between the reseller's representative who enters a service order into the system and the NYT representative who enters a retail customer's order for the same service into the system.

[44]As the FCC has stated: "Obviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251(b)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering." First Report and Order, ¶ 523.

Because resellers cannot view on their terminals the service orders as entered by the NYT representative, they cannot determine whether the order was entered correctly. As a result, resellers' customers may not receive the services that they requested. Such errors cause customer dissatisfaction and increased costs for resellers. By contrast, these problems do not exist for NYT's retail customers, since the NYT customer service representative can verify the accuracy of the data in a service order with the retail customer while the customer is still on the line. Kennedy, pp. 24-26; Wajsgras, ¶ 14; Spivy, ¶ 13.

NYT acknowledges that all orders from resellers require manual intervention by NYT, and it does not deny the problems that resellers have experienced as a result of such intervention. See NYT's Response to Staff-NYT-1.6; Spivy, ¶ 13.[45] Moreover, NYT acknowledged that it has not even undertaken to measure the delays or the volume of errors caused by such intervention. Tr. 499-500 (Butler).

> C. Resellers' Access To NYT's OSSs Is Not As Reliable As That Of NYT's Own Retail Operations.

The evidence also indicates that resellers' access does not achieve the level of accuracy and reliability available to NYT own retail operations. For example, the previously-described

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[45]NYT also admits that the support of the provisioning functionality by its OSSs is "supplemented" by manual processing. Miller, ¶ 19.

human intervention in NYT's processing of resellers' orders creates greater possibilities for errors in installation and repair. The OSSs also are often unavailable during the hours that they are supposed to be accessible to CLECs. Kennedy, pp. 18-19. Furthermore, at least with respect to the Web/GUI, CLECs do not have immediate responses from the "system edits" that NYT has developed to reduce the likelihood of ordering errors.[46]

In addition, although NYT has asserted that it does not record the number of rejected service orders, NYT has provided data indicating that resellers' service orders are being rejected by the NYT systems at an extremely high rate, exceeding 25 percent.[47] Similarly, Mr. Miller testified at the technical conference that almost 25 percent of the 84 orders recently received by NYT in a "test" were in a "query" status. Tr. 458-59. Given this data, combined with NYT's failure to present any data regarding the reliability of its own access to its OSSs, the Commission cannot find that resellers receive parity access from NYT.

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[46]Hou, pp. 22-23; Spivy, ¶ 69; Tr. 386, 448 (Miller); NYT Responses to On-the-Record Requests, Transcript Request p. 492 (Butler).

[47]In its responses to Staff's interrogatories, NYT stated that it has recorded 1,917 unique queries, and 2,143 total queries, that it has sent to resellers when the reseller's request "contains an error." NYT's Response to Staff-NYT-1.3. Because NYT listed a total of 7,572 "requests" received since October 8, 1997, the number of queries equals more than 25 percent of the total number of requests. This suggests that rejections are occurring in more than 25 percent of resellers' service orders. See NYT's Response to Staff-NYT-1.2.

D.   NYT Is Not Operationally Ready To Provide Resellers With Parity Access To Its OSSs.

In contrast to the affirmative evidence establishing that CLECs do not receive parity access to NYT's OSSs, the information set forth in NYT's draft Section 271 application, and the testimony of NYT's witnesses at the conference, fail to show that NYT is operationally ready to provide any reseller with parity access. Hou, pp. 7-17; Spivy, ¶¶ 3, 35-39; Wajsgras, ¶ 9.

2.   **NYT Has Provided No Data By Which The Commission Could Properly Compare NYT's Provisioning Of OSS Services To Resellers With Its Provisioning Of Those Services To Itself.**

NYT has provided no data that would allow the Commission to compare NYT's OSS service provisioning for resellers with its provisioning of OSS services to itself or its end users. NYT's application provides no baseline data on the speed, accuracy, or reliability of data accessed from its OSSs when they are used to provide service to NYT or its end user customers, much less any data on how NYT's own use of these systems compares to the OSS services it provides to resellers. Hou, pp. 13-15; Spivy, ¶ 67. Further, NYT has not even provided evidence on what it describes as the "ultimate" measure of its proposed standard of "comparability" -- a standard which is, in any event, inadequate -- to show that it is providing resellers parity access to its OSSs. Hou, pp. 14-16; Miller, ¶ 40.

3. **NYT Has Not Proposed Adequate Standards And Metrics For Future Determinations Regarding Parity.**

NYT also has not proposed to develop adequate standards and metrics adequate to determine whether it is providing parity access. In particular, NYT has provided no carrier-to-carrier metrics that compare the experience of CLEC representatives with NYT retail representatives in the pre-ordering, ordering, and repair environments. In fact, NYT has not even provided standards for what it does for itself. Hou, pp. 16-17; Tr. 404-405 (Hou).

The few standards and measurements that NYT has proposed (unilaterally, without the agreement of the CLECs) are inadequate to make an accurate, reliable determination of whether OSSs are being provided and resellers' transactions are being completed in a nondiscriminatory and commercially reasonable manner. Hou, pp. 51-53.[48] In fact, NYT has not even implemented its own standards and measurements. Notwithstanding Mr. Coffey's testimony that NYT has developed "comparability measurements" for resale (Coffey, pp. 3-11 & Exhibit 1), NYT admitted in its responses to Staff's interrogatories that it is only "in the initial stages of developing" the comparability reports that, according to Mr. Coffey, NYT will provide to

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[48]For example, NYT proposes to track the number and duration of customer outages only for lines that have been out of service for more than 24 hours. This measurement is commercially unreasonable because it fails to include all significant outages, which should be defined as outages of four or more hours. Hou, p. 53.

resellers. NYT Response to Staff-NYT-3.1. Mr. Coffey acknowledged at the technical conference that NYT will require up to _three_ _months_ to complete the measurements that he described in his affidavit. Tr. 260 (Coffey).

4. NYT Has Not Tested Access To Its OSSs.

NYT has also provided no evidence that it has performed comprehensive testing of its OSS interfaces, which is critical to demonstrate that NYT's OSSs are operationally ready to perform. Hou, pp. 9, 11-12, 15-16; Miller, ¶ 41; Spivy, ¶¶ 27, 31, 67; see also Tr. 455 (Miller). NYT's witnesses agreed in other contexts that comprehensive testing is critical before parity can be demonstrated. Tr. 98, 542 (Garzillo); Tr. 53 (Gansert); Tr. 303, 365-66 (Butler). Nevertheless, despite vague assertions during the conference that it has conducted some tests of its OSSs, NYT presented no evidence of any actual comprehensive test results. See Tr. 442 (Miller). Critically, NYT admitted that it _never_ conducted "stress testing," which is necessary to determine whether its interfaces are capable of handling commercially competitive volumes of CLEC requests. Tr. 442-443 (Miller).

5. NYT'S Interfaces To Its OSSs Do Not Operate In A Commercially Reasonable Manner.

The record demonstrates that NYT's interfaces do not operate in a commercially reasonable manner. Hou, pp. 18-31. The evidence shows that: (1) NYT's interfaces cannot provision

CLEC orders in commercially reasonable quantities; and (2) each
of its interfaces suffers from numerous deficiencies that prevent
resellers from receiving commercially reasonable access.

      **A.   NYT's Interfaces Lack Sufficient Capacity To
             Handle CLEC Orders.**

At the conference, Mr. Miller testified that NYT's OSSs
have sufficient capacity to handle service orders both from NYT's
retail operations and from resellers. Tr. 443-46. Parity of
access, however, demands not only that NYT's underlying OSSs
themselves have the capacity to support all such orders, but also
that the interfaces and gateways available to the CLECs have
sufficient capacity to handle all resale orders that CLECs can
reasonably be expected to submit in the future. Thus, at best,
Mr. Miller's assertion that the DCAS gateway "has enough resource
[sic] in place to handle [the] traffic we have today" begs the
question. Tr. 445 (emphasis added).

NYT's interfaces simply cannot handle the volumes of
service orders that can reasonably be expected from resellers.
These interfaces certainly do not have sufficient capacity to
handle orders from AT&T and other CLECs who expect to submit
substantial numbers of orders into the NYT systems. Curran, pp.
10-11. In its recent response to the Staff's interrogatories,
NYT acknowledged that "a reasonable estimate" of the maximum
volume of resale orders that it is currently capable of
processing is 1,600 orders per week. See NYT Response to Staff-

NYT-1.9. This volume is plainly insufficient to handle the expected volume of orders from AT&T alone.

AT&T, of course, will not be the only reseller competing in NYT's territory. There are, and will be, numerous other resellers, many of whom can also be expected to submit large numbers of orders. Even if, as NYT asserted in its response to the Staff's interrogatories, it can treble its capacity within a four-week period, that capacity would still be far short of the volume of orders that CLECs can be expected to submit.

NYT's insufficient capacity is discriminatory, as well as commercially unreasonable. NYT's retail operation will not experience capacity problems, because it does not need to utilize the CLECs' interfaces to submit orders into the NYT OSSs. Kennedy, p. 18; Curran, p. 12.

NYT acknowledges that the capacity of its interfaces and gateways are insufficient. See Tr. 462 (Miller) (the capacity of the gateway is a "point that we need to address"). NYT "plans" to expand its gateway capacity by increasing the number of servers for handling orders from 2 to 11 "by the end of April," and asserts that "[w]ith the planned automation program and migration of product mix to the exchange product, capacity levels stand to further increase to 10,000 lines per day." Tr. 445, 462 (Miller); NYT Response to Staff-NYT-1.9. NYT's vague, undefined "plans," however, cannot alter the basic fact: NYT's interfaces and gateways lack the capacity to handle commercially

reasonable quantities, and are unlikely to do so in the near future.[49]

B. NYT's Interfaces Do Not Operate In a Commercially Reasonable Manner.

The evidence further shows that NYT's interfaces -- the Web/GUI, EIF, and EDI -- are significantly flawed and cannot provide commercially reasonable access that CLECs need to compete effectively.

i. Web/GUI

Despite its title (Web/Graphical User Interface), the Web/GUI does not even constitute a bona fide electronic interface, because it does not involve the automated operation of NYT's OSS with the CLEC's OSS systems. Hou, p. 19; Wajsgras, ¶ 11; Tr. 403 (Hou). In any event, the Web/GUI does not provide commercially reasonable OSS support to resellers for a number of reasons, including the following:

o   The Web/GUI is essentially an electronic mail system between the CLEC and NYT, and the information transmitted by the CLEC through the Web/GUI must be manually converted by NYT into its EIF protocol in order to process the service order. This process is neither efficient nor an industry standard. Spivy, ¶¶ 47-48; Miller, ¶ 7.

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[49]Even if, as NYT asserted in its response to Staff's interrogatory, its capacity levels "stand to further increase to 10,000 lines per day" at some point in the future, those levels would be insufficient to handle the volume of orders submitted by resellers. NYT's response assumed that each resale service order would involve four lines. See NYT Response to Staff-NYT-1.9. Thus, a 10,000 line per day capacity would be the equivalent of 2,500 service orders per day, or only 12,500 service orders per week.